



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0344]

RIN 1625-AA00

Safety Zone; Piscataqua River Turning Basin Dredge Project, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for the navigable waters of the Piscataqua River in Portsmouth Harbor. The first safety zone will be a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations. The second safety zone will be a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The safety zones are necessary to protect persons and vessels from hazards associated with dredging, drilling, and blasting operations for overall widening of the uppermost turning basin of the Piscataqua River.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through April 15, 2022. For the purposes of enforcement, actual notice will be used from November 1, 2021, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0344 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207-347-5015, e-mail Shaun.T.Doyle@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On February 12, 2021, the U.S. Army Corps of Engineers notified the Coast Guard of plans to fund dredging operations on the uppermost turning basin of the Piscataqua River in Portsmouth Harbor. The project consists of widening the uppermost turning basin of the Piscataqua River from 800 feet to 1200 feet to improve navigation maneuverability and safety.

In response, on August 25, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Piscataqua River Turning Basin Dredge Project, Portsmouth, NH (86 FR 47433). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this dredging project. During the comment period that ended September 24, 2021, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Northern New England (COTP) has determined that potential hazards associated with the dredging operations starting November 1, 2021, will be a safety concern for anyone within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations. Additionally, the COTP has determined that potential hazards associated with the explosives to be used

in this operation would be a safety concern for anyone within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because timely action is needed to respond to the potential safety hazards associated with the dredging project.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on August 25, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes two safety zones from November 1, 2021, through April 15, 2022. The first safety zone will be a 100-yard radius around any vessel, barge, or dredging equipment actively engaged in dredging operations. The second safety zone will be a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. The 500-yard safety zone will be enforced during active blasting operations and will be suspended once successful detonation has been confirmed and blasting operations have been secured. The Coast Guard will notify the public and local mariners of the 500-yard safety zone through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 in advance of any enforcement. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zones will be enforced during periods of active dredging or blasting operations from November 1, 2021, through April 15, 2022. The 500-yard radius safety zone around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites will only be enforced when blasting operations are conducted for short durations. Once blasting operations have been secured, vessel traffic will be able to transit around the 100-yard radius safety zone around any vessel, barge, or dredging equipment actively engaged in dredging operations. Dredging vessel(s) conducting operations will accommodate necessary commerce and movement of cargo through daily coordination with U.S. Army Corps of Engineers, contractors, Portsmouth Pilots, and U.S. Coast Guard. Proper public notice of enforcement will be given through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing two safety zones near the uppermost turning basin of the Piscataqua River in Portsmouth

Harbor that will be enforced periodically from November 1, 2021, through April 15, 2022, that prohibits entry within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations, and within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Add § 165.T01-0344 to read as follows:

§ 165.T01-0344 Safety Zone; Piscataqua River Turning Basin Dredge Project, Portsmouth, NH.

- (a) *Location.* The following areas are a safety zone:

(1) *Safety zone 1.* All navigable waters of the Piscataqua River, from surface to bottom, within a 100-yard radius around any vessel, barge, or dredging equipment engaged in dredging operations.

(2) *Safety zone 2.* All navigable waters of the Piscataqua River, from surface to bottom, within a 500-yard radius around any vessel, barge, or dredging equipment engaged in blasting operations and any blasting worksites.

(b) *Definitions.* As used in this section, *Designated Representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Northern New England (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's Designated Representative.

(2) To seek permission to enter, contact the COTP or the COTP's Designated Representative via VHF-FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741-5465. Those in the safety zones must comply with all lawful orders or directions given to them by the COTP or the COTP's Designated Representative.

(d) *Enforcement period.* This section is effective from November 1, 2021, through April 15, 2022, but will only be enforced while dredging or blasting operations are in progress. The Coast Guard will utilize Broadcast Notice to Mariners and Local Notice to Mariners to notify the public of the time and duration that these safety zones will be enforced.

Dated: October 21, 2021.

A. E. Florentino,
Captain, U.S. Coast Guard,
Captain of the Port, Sector Northern New England.

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